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BEFORE THE
Supreme Court of the United States

October Term, 1943

No. **377**

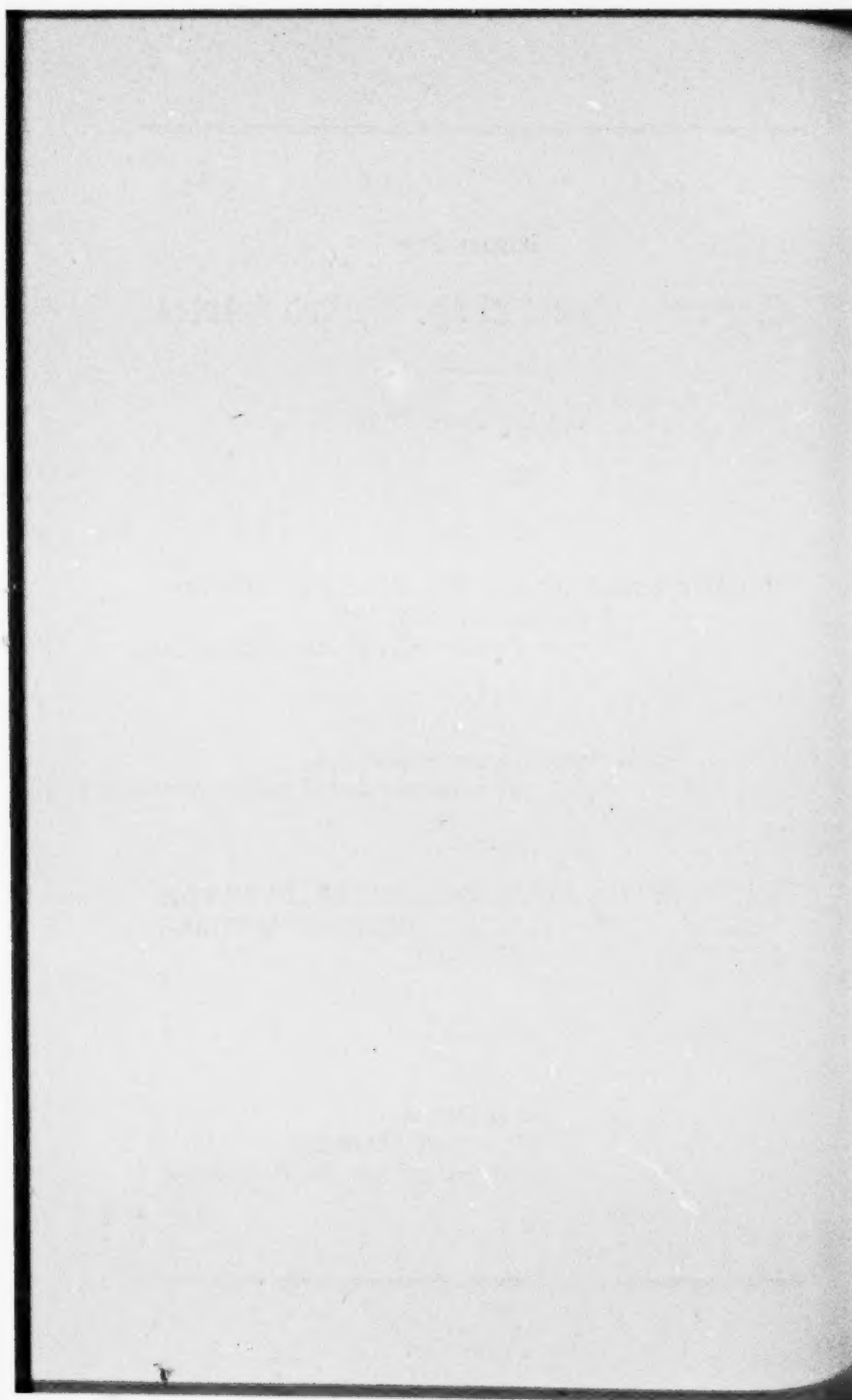
NATHAN GOLDSMITH and THE MANHATTAN COFFEE
& SUGAR COMPANY, INC.
Petitioners, and Appellants below,

v.

UNITED STATES OF AMERICA,
Respondent, and Appellee below.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.**

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*To the Honorable, Harlan F. Stone, Chief Justice, and
the Associate Justices of the Supreme Court of the United
States:*

The petitioners, and the appellants below, pray that a writ of certiorari issue to review the the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in this case on August 19, 1943 (R. 506).

OPINIONS BELOW

The United States District Court for the Eastern District of New York did not render an opinion. The opinion of the Circuit Court of Appeals for the Second Circuit has

not been reported but the same is set forth on pages 501 to 505 of the record.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Second Circuit was entered on August 19, 1943 (R. 506). Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. This petition is filed within 30 days from the date of the entry of the judgment as required by rule of Court.

STATEMENT OF FACTS

Nathan Goldsmith, petitioner, a man of limited education (R. 240) had engaged in the legitimate sugar and coffee business since the year 1916 (R. 239) under the firm name of the petitioner, Manhattan Coffee & Sugar Company, Inc. He was the President and Secretary of the corporation (R. 239). As a dealer in sugar he was required to register with the Office of the Price Administration the amount of sugar he "owned" on April 28, 1942. The petitioner, Goldsmith reported on April 28, 1942 (R. 364 Gov. Ex. 4a) that for institutional and industrial purposes his present inventory (number of pounds of sugar owned by registering unit) was "00" lbs. The petitioners were also required to register the amount of sugar on hand as retailers and wholesalers. This last requirement was also complied with by the petitioners on April 28, 1942 (R. 358 Gov. Ex. 3). In this registration blank the petitioners stated that they had a present inventory of 4,000 lbs (Gov. Ex. 3 R. 358).

Prior to the time for registration the petitioner, Goldsmith (R. 252) talked with members of the sugar trade as to the manner of answering the registration blanks, and also consulted counsel (R. 253) and was informed that the "present inventory" meant sugar in his possession which he could sell to a grocer.

While the petitioners did not actually have in their possession, or control any sugar, nor any title to sugar on April 28, 1924, they did have an option on sugar held in the name of two banks, Finance Trust, and the Modern Industrial Bank, and also with the David S. Stern Corporation. None of the bills of lading for said sugar, or the warehouse receipts were in the name of the petitioners, and title to all of the said sugar was vested in the two banks, or the David S. Stern Corporation, with the right of the petitioners to draw upon said sugar by cash payments at the time of the delivery (R. 374, 350, 344, 370).

The United States claims that the petitioners should have reported this sugar as "owned" by the petitioners on April 28, 1942. The registration blanks did not refer to any sugar under contract or option. They made specific reference only to the sugar "now owned" by the registering unit. The petitioners were given no opportunity by the officers or agents of the United States to correct any error, if one was made, but the sole contacts by the officers of the United States were made for the sole purpose of obtaining evidence, if possible, sufficient to sustain an indictment. The first time any sugar came into the possession of the petitioners under the option to purchase was on July 13, 1942 (R. 74).

The petitioners were indicted on two counts (R. 6-8). The substance of the indictment (R. 6) charges in the first count that the petitioners violated Section 80 of Title 18, U. S. Code by knowingly and willfully making a false statement, the specific charge being (R. 7) :

"that the present inventory (number of pounds of sugar now owned by registering unit for sale) was 4,000 pounds, whereas in truth and in fact, as the said defendants then and there well knew, the defendants owned for sale on said date and at the said time approximately 517,000 pounds of sugar."

The second count likewise charged that the petitioners

willfully and knowingly made a false statement as follows:
(R. 7-8)

“that the present inventory (number of pounds of sugar now owned by registering unit) was naught (00) pounds, whereas in truth and in fact, as the said defendants then and there well knew, the defendants owned on the said date and at the said time approximately 517,000 pounds of sugar.”

The petitioners moved for a dismissal of the indictment at the close of the government's case upon the ground that the guilt of the petitioners had not been established beyond a reasonable doubt (R. 210). This motion was denied, and exception was taken (R. 210). The motion was renewed upon the same grounds at the close of the trial and was again denied by the Court with an exception noted (R. 326). The jury found the petitioners guilty on both counts of the indictment (R. 339). The petitioner, Goldsmith, was sentenced to imprisonment for two years on each count (R. 2), and the petitioner, Manhattan Coffee & Sugar Company, Inc., was fined \$2,500.00 (R. 2). The judgment of the District Court was affirmed by the Circuit Court (R. 506).

STATUTES INVOLVED

The petitioners were indicted under the following statute:

“Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a

material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any manner within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (52 Stat. 197; 18 U. S. C. A. 80).

QUESTIONS PRESENTED

There are three general questions of law raised by this petition. The petitioners assert the following errors.

1. That the District Court erred in overruling the motion of the petitioners to dismiss the indictment made at the close of the government's case (R. 210), and again erred in failing to sustain the motion to dismiss the indictment made at the close of all of the evidence (R. 236) for the reason that there was no evidence to establish the guilt of the petitioners as a matter of law. That the Circuit Court erred as a matter of law in affirming the judgment on this ground.

2. That the District Court erred in instructing the jury in regard to the ownership of the sugar in question, and that the Circuit Court erred in failing to reverse the judgment upon this ground.

3. That the District Court Judge erred in his charge to the jury, and by refusing requested instructions, and by commenting at length upon the evidence offered by the United States, and in making no favorable comment on the evidence offered by the petitioners, but in fact, ridiculing the contentions of the petitioners, which comment of the Court, and charge to the jury was in effect a direction to the jury to bring in a verdict of guilty on both

counts of the indictment against the petitioners. That the Circuit Court erred in not reversing the judgment on this ground alone.

REASONS FOR GRANTING THE WRIT

The petitioners assert that the writ of certiorari should be granted under subdivision 5 (b) of Rule 38 of this Honorable Court because the United States Circuit Court of Appeals for the Second Circuit has affirmed a judgment of the District Court for the Eastern District of New York of conviction upon evidence which is wholly insufficient to show that the petitioners committed any crime as charged under the indictment under the decisions of this Honorable Court, and the decisions of other Circuit Courts of Appeal. That the decision of the Circuit Court of Appeals for the Second Circuit conflicts with the decisions of this Court on the question of ownership of the sugar in question. That the decision of the Circuit Court of Appeals finding no error in the instructions to the jury conflicts with the decisions of this Court, and other Circuit Courts of Appeal, and that the Circuit Court of Appeals further erred in failing to reverse the judgment on the grounds that the District Judge erred in commenting to the jury on the evidence, and that the error in this regard conflicts with the decisions of this Honorable Court, and other Circuit Courts of Appeals. All of which will be more fully shown by the brief of the petitioners. That this Court in the interest of right and justice should invoke its jurisdiction in order to prevent a serious miscarriage of justice.

CONCLUSION

WHEREFORE, Your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding and directing that Court to send to this Court for its review and determination its complete record in this case, and upon a review thereof, that the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in this case be vacated and reversed, and this case be remanded to the said Circuit Court with instructions to proceed further as ordered and directed by this Court.

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